

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Benjamin Baumann,
Petitioner

v.

Docket No.: CR-21-0626

Date Issued: June 9, 2023

State Board of Retirement,
Respondent

Appearance for Petitioner:

Benjamin Baumann, *pro se*

Appearance for Respondent:

Yande Lombe, Esq.
State Board of Retirement
One Winter Street, 8th Floor
Boston, MA 02108

Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

The Petitioner is not entitled to purchase contract service for his employment at the University of Massachusetts Dartmouth because the conclusion of his contract service did not “immediately preced[e]” his membership in the state retirement system. *See* G.L. c. 32, § 4(1)(s); 941 CMR 2.09(3)(e) (defines “immediately preceding” as within 180 calendar days).

DECISION

Petitioner Benjamin Baumann timely appeals under G.L. c. 32, § 16(4) the decision of the State Board of Retirement to deny his application to purchase contract

service from September 23, 2000 to May 4, 2002 because he did not become a member of the retirement system within 180 days of the conclusion of his contract service.

On December 23, 2022, DALA suggested that the matter could be decided on written submissions under 801 CMR 1.01(10)(c), and ordered the parties to submit argument and proposed exhibits. Neither party objected to the magistrate's order. On February 28, 2023, Petitioner filed his argument and two proposed exhibits. On April 3, 2023, the Board filed its memorandum and several additional proposed exhibits.

I enter the following exhibits into evidence:

Ex. 1: Letter from Steven Briggs, Former Director of Admissions University of Massachusetts Dartmouth, dated January 25, 2023, regarding Mr. Baumann's "break in service";

Ex. 2: Letter from Human Resources, dated February 2, 2023, and Earnings History report from 1999-2002;

Ex. 3: Letter from State Board of Retirement ("Board") denying Mr. Baumann's request to purchase service, dated November 23, 2021;

Ex. 4: Letter from Mr. Baumann appealing the Board's decision, dated November 23, 2021 and received December 6, 2021;

Ex. 5: Contract Service Buyback Form for service during September 2000 to September 2002, dated March 9, 2015, and Earnings History Report from May 4, 1985 to February 23, 2002;

Ex. 6: Email from Mr. Baumann, dated October 22, 2021;

Ex. 7: Employment Continuation Forms for Mr. Baumann, dated February 15, 2002, September 10, 2001, and April 24, 2001, and New Employee Personal

Data/Employment Form for Temporary, Non-Benefited Position for Mr. Baumann, dated September 18, 2000; and

Ex. 8: Emails between the Board and Human Resources, dated from November 18, 2021 to November 23, 2021.

FINDINGS OF FACT

Based on the exhibits presented by the parties, I make the following findings of fact:

1. On September 23, 2000, Benjamin Baumann began an “03” Staff Assistant contract position with the University of Massachusetts Dartmouth (UMass). He stopped working there on April 21, 2001. Mr. Baumann began working there again on a contract basis from September 8, 2001 through May 4, 2002. (Exs. 2, 4, 5, 6, 7.)

2. The “03” Staff Assistant position was eliminated on May 4, 2002. In its place, UMass Admissions sought to create a permanent full-time Admissions Counselor position. Budget approval for the position took several months. It then took an additional several weeks to create a Search Committee and interview the many interested candidates. (Exs. 1, 4.)

3. On November 26, 2002, Mr. Baumann was hired as the Admissions Counselor and thereby became a member of the Massachusetts State Employee’s Retirement System (MSERS). Mr. Baumann’s duties in his new position were the same as his “03” contract position duties. (Exs. 1, 4, 6, 8.)

4. On March 9, 2015, Mr. Baumann applied to purchase both periods of his contract service from 2000 to 2002. In Section A of the form, Mr. Baumann indicated that the service he intended to purchase immediately preceded membership in the MSERS. (Ex. 5.)

5. Section B was signed and completed by UMass on May 22, 2015, with a written note that the “non-benefitted” term ended May 4, 2002, and the “benefitted” term began November 26, 2002. UMass stated that Mr. Baumann’s contract service did *not* immediately precede his membership in the MSERS. (Ex. 5.)

6. In a November 23, 2021¹ letter to Mr. Baumann, the Board denied his 2015 request to purchase his contract service. The Board advised Mr. Baumann that it was unable to approve his request because the period between the end of his contract service and the beginning of his membership in MSERS was 205 days, exceeding the maximum of 180 days set forth at 941 CMR 2.09(3)(e). (Ex. 3.)

7. On December 1, 2021, Mr. Baumann timely appealed the Board’s decision. (Ex. 4.)

CONCLUSION AND ORDER

The Board’s denial of Mr. Baumann’s request to purchase contract service is affirmed. Because the length of time between the termination of his contract service and his membership in MSERS exceeded 180 days, he cannot purchase creditable service under G.L. c. 32, § 4(1)(s) and 941 CMR 2.09(3)(e).

Qualifying members who retire from public service are entitled to receive a superannuation retirement allowance based in part on years of creditable service. *See* G.L. c. 32, § 5(2)(a). “Creditable service” is defined as “all membership service, prior service and other service for which credit is allowable to any member under the provisions of sections one to twenty-eight inclusive.” G.L. c. 32, § 1. Under G.L. c. 32, § 4(1)(s):

¹ There is no indication in the record why the Board took 6 years to make its decision.

Any member in service of the state employees' retirement system who, *immediately preceding the establishment of membership in that system or re-entry into active service in that system*, was compensated for service to the commonwealth as a contract employee for any department, agency, board or commission of the commonwealth may establish as creditable service up to 4 years of that service if the member has 10 years of creditable service with the state employees' retirement system, and if the job description of the member in the position which the member holds upon entry into service or re-entry into active service is substantially similar to the job description of the position for which the member was compensated as a contract employee.

(Emphasis added).

A member of MSERS may purchase his prior contract service only if the contract service "immediately preceded" his establishment of membership with MSERS or he re-enters active state service. The retirement statute does not define what "immediately preceded" means. The Board has interpreted "immediately preceding" to mean within 180 calendar days. 941 CMR 2.09(3)(e). The validity of the regulation is not being contested. As a result, members seeking to purchase prior contract service may do so only if their retirement system membership began within 180 days of the end of their contract service. *Cooper v. State Bd. of Retirement*, CR-20-0345 (DALA Aug. 12, 2012).

The analysis here is straightforward. Mr. Baumann is not eligible to purchase his contract service because he did not start his permanent position with UMass, and thereby become a member of MSERS, until 205 days after the termination of his service.

Mr. Baumann argues that the reasons for the delay in starting his full-time job were beyond his control. Indeed, UMass attests to the many steps required to create Mr. Baumann's position and finalize his hiring: obtaining budget approval, creating a search committee, and interviewing additional candidates. That this occurred through no fault of Mr. Baumann does not change the fact that the 180-day requirement was not met. *See Valipour v. State Bd. of Retirement*, CR-14-537 (DALA Dec. 30, 2015) (finding no

relevance in fact that state-wide decrease in workforce caused petitioner to miss 180-day deadline).

Mr. Baumann also argues for an equitable remedy: that, although his contract service did not “immediately preced[e]” his membership service, the Board’s decision should nevertheless be reversed because his circumstances “satisfy the spirit of the language” of the statute.² He also relies on the fact that his starting full-time employment was only 25 days beyond the 180-day window. It is well established that DALA does not have equitable powers. *See Donnelly v. MTRS*, CR-09-176 (DALA Sep. 7, 2012) (finding “no legal support” for DALA decisions based in equity); *Petrillo v. PERAC*, CR-92-731 (DALA Feb. 15, 1993; affirmed by CRAB Oct. 22, 1993) (observing absence of authorization to grant equitable relief in statutory and case law).

For the above-stated reasons, the Board’s decision is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: June 9, 2023

² It seems clear that Petitioner received his permanent job because of his performance in the “03” position and he started the job as soon as UMass was able to offer it to him. Although DALA cannot afford him relief, he could ask his state representative to file a private bill on his behalf.